

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

08/24/2001

CLERK OF THE COURT  
FORM V000A

HONORABLE MICHAEL D. JONES

M. MINKOW  
Deputy

CV 2001-011726

FILED: \_\_\_\_\_

THOMAS R VUKOVICH, et al.

ERIC G CROCKER

v.

WALTER E SWITZER, et al.

MESA CITY COURT  
REMAND DESK CV-CCC  
MESA CITY PROSECUTOR'S OFFICE  
245 W SECOND ST STE 201  
MESA AZ 85201

MINUTE ENTRY

This Court has jurisdiction of this Special Action pursuant to A.R.S. Sec. 12-124.

The Petitioners in this Special Action are Defendants charged with driving while under the influence of intoxicating liquor in the Mesa City Court. All Petitioners, during the investigation of their DUI charges, were subjected to a blood draw by a phlebotomist employed by the Mesa Police Department. Each of the Petitioners filed a Motion to Suppress the blood draw results alleging that the blood draws violated the requirements of A.R.S. Sec. 28-1388(A). The Motions to Suppress were heard by different judges, but those judges denied all of the Motions to Suppress. This Special Action has followed.

On August 22, 2001, this Court heard oral argument on the Petitions for Special Action and Request to Continue the Interlocutory Stay. This Court continued the stay and accepted

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jurisdiction on that date. This matter has been under advisement since that time. The Court has considered the excellent memoranda of law prepared by counsel and the rulings of the trial courts and applicable statutory and case authorities.

In an obviously well thought-out and constructed argument, Petitioners claim that a phlebotomist who is not supervised by a physician [as medical assistants are required under A.R.S. Sec. 32-1456 (A)] is not a "qualified person within the meaning of A.R.S. Sec. 28-1388(A)." Therefore, Petitioners assert that the trial judges erred in denying the Motions to Suppress the results of the blood draw.

First, this Court notes that A.R.S. Sec. 32-1456(A) is a regulatory statute governing medical assistants. That statute has no applicability to a forensic blood draw in a criminal case.

Evidence was presented to the trial judge that a qualified individual performed the blood draws. It is important to note that there is no question but that the blood draws were performed properly by someone who knew what they were doing, who had experience, and that no physical harm was caused to Petitioners during the blood draw. The only question is whether the phlebotomist was supervised by a physician. The trial judges found that the phlebotomist was a qualified individual within the meaning of applicable law. A.R.S. Sec. 28-1388(A); State v. Nihiser, 191 Ariz. 199, 953 P.2d 1252 (App. 1997).

Most importantly, A.R.S. Sec. 28-1388(A) provides in the second sentence of that section:

The qualifications of the individual withdrawing the blood and the method used to withdraw the blood are not foundational prerequisites for the admissibility of a blood alcohol content determination made pursuant to this subsection.

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Petitioners seem to have ignored the second sentence of this statute as quoted above. Clearly, our legislature has provided that the qualifications of the individual or phlebotomist withdrawing the blood are not foundational prerequisites for the admissibility of the alcohol content of the blood. There is no statutory nor constitutional right to have a medical assistant or phlebotomist supervised by a physician perform a blood draw under either Arizona law or Federal law.

Petitioners' complaints regarding the phlebotomist are therefore without merit. The trial judges correctly denied the Motions to Suppress for the reasons that the qualifications of the person making the blood draw are not prerequisites to the admissibility of the results of the blood draw.

IT IS ORDERED affirming the rulings of the Mesa City Court Judges denying Petitioners' Motions to Suppress evidence obtained from blood draws.

IT IS ORDERED terminating the stay orders in each of these cases.

IT IS ORDERED remanding these cases back to the Mesa City Court for all future proceedings.